

**RULES
OF
DEPARTMENT OF REVENUE
INCOME TAX DIVISION**

**CHAPTER 560-7-8
RETURNS AND COLLECTIONS**

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(1) **Purpose.** The purpose of this regulation is to provide guidance concerning the administration of O.C.G.A. § 48-7-29.16, which provides a credit for qualified education expenses. Other provisions and conditions regarding student scholarship organizations and the qualified education expense credit are set forth in O.C.G.A. § 48-7-29.16 and Chapter 2A of Title 20.

(2) **Definitions for purposes of O.C.G.A. § 48-7-29.16, Chapter 2A of Title 20, and this regulation.**

(a) “Qualified Education Expense Credit” means the credit allowed pursuant to O.C.G.A. § 48-7-29.16.

(b) “Fiscal Year” means the taxable year of the SSO.

(c) “Calendar Year Report” means the annual report that must be prepared on a calendar year basis and submitted to the Department of Revenue by January 12 as required by O.C.G.A. § 20-2A-3.

(d) "Audit Report" means the annual report that is prepared by an independent certified public accountant after completing the annual audit that is required by O.C.G.A. § 20-2A-2.

(e) "SSO" means a student scholarship organization as defined in O.C.G.A. § 20-2A-1.

(f) "Expenditure of Funds" means the expenditure of lawful money of the United States and does not include other intangible assets such as stocks, bonds, etc.

(3) Coordination of Agencies.

(a) Each SSO must annually submit notice to the Department of Education, in accordance with the Department of Education's guidelines, concerning their participation as an SSO.

(b) The Department of Education will maintain on its website a current list of all SSOs that have provided notice.

(4) Annual Audit Report.

(a) O.C.G.A. § 20-2A-2 requires that an annual audit be conducted by an independent certified public accountant. The audit shall be completed and the audit report issued within 120 days after the end of the SSO's fiscal year.

(b) The audit report must certify that for the SSO's fiscal year the SSO has met all the requirements of O.C.G.A. § 20-2A-2, and is an SSO as defined in O.C.G.A. § 20-2A-1.

(c) The audit report shall also certify that the calendar year report submitted to the Department of Revenue pursuant to

O.C.G.A. § 20-2A-3 was correct. If it was not correct, all discrepancies found must be noted in the audit report.

(d) As is required by O.C.G.A. § 20-2A-3, the annual audit report shall be submitted to the Department of Revenue on or before the January 12 date following completion of the audit report.

(5) Calendar Year Report.

(a) The calendar year report shall be submitted by the SSO by January 12. Form "IT-QEE-SSO2" shall be the form used to submit the report.

(b) The report shall be prepared on a calendar year basis regardless of the fiscal year of the SSO.

(c) The report shall include the following:

1. The total number and dollar value of contributions and qualified education expense credits preapproved;

2. A list of donors (which includes the donor's name and address), including the dollar value of each donation and the dollar value of each preapproved qualified education expense credit; and

3. A copy of the audit conducted pursuant to O.C.G.A. § 20-2A-2.

(d) If an SSO fails to send the calendar year report on or before the January 12 deadline, no further preapprovals will be issued to taxpayers for contributions to the SSO until the SSO corrects the failure.

(6) Examples of the Timing of Reports.

(a) An SSO's first year begins on January 1, 2008, and ends on December 31, 2008. By January 12, 2009, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2008. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2009. The audit report submitted on or before January 12, 2010, will include the results of the audit for the year ending December 31, 2008. The audit report will also include the results of the audit of the calendar year report for the calendar year ending December 31, 2008.

(b) An SSO's first fiscal year begins on May 1, 2008, and ends on April 30, 2009. By January 12, 2009, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2008. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2009. The audit report submitted on or before January 12, 2010, will include the results of the audit for the fiscal year ending April 30, 2009. The audit report will also include the results of the audit of the calendar year report for the calendar year ending December 31, 2008.

(c) An SSO's first fiscal year begins on December 1, 2008, and ends on November 30, 2009. By January 12, 2009, the SSO must submit the required calendar year report for the calendar year that ended December 31, 2008. No audit report will need to be submitted for this first year since the due date for completing the audit report falls after the deadline of January 12, 2009. By January 12, 2010, they must submit the required calendar year report for the calendar year that ended December 31, 2009. No audit report will need to be submitted for this second year since the due date for completing the audit report falls after the deadline of

January 12, 2010. The audit report submitted on or before January 12, 2011, will include the results of the audit for the fiscal year ending November 30, 2009. The audit report will also include the results of the audit of the calendar year report for the calendar year ending December 31, 2008.

(7) Credit Limitations for Individuals and Corporations.

The amount of qualified education expense credit granted to a taxpayer shall not exceed:

(a) For an individual taxpayer, except as otherwise provided in this paragraph, the credit is limited to the lesser of the actual amount expended or the dollar amount provided in O.C.G.A. § 48-7-29.16.

(b) For an individual taxpayer filing a married filing separate return, the credit is limited to the lesser of the actual amount expended or \$1,250.00 per tax year.

(c) For a corporate taxpayer, the credit is limited to the lesser of the actual amount expended or 75 percent of the corporation's income tax liability.

(8) Credit limitations for pass-through entities. When the taxpayer is a pass-through entity, the intended contribution amount shall be allocated to the shareholders, partners, and members based on their profit/loss percentage. The credit limitations in O.C.G.A. § 48-7-29.16, and paragraph (7) of this regulation, shall be applied separately to the shareholders, partners, or members.

(9) Preapproval of the Contribution.

(a) Form IT-QEE-TP1 shall be used to request preapproval of the qualified education expense credit from the Department of Revenue.

(b) The contributor should not file Form IT-QEE-TP1 with the Department of Revenue until the contributor's recipient SSO is listed on the Department of Education's website. If the contributor's recipient SSO is not listed on the website at the time that the Department of Revenue attempts to verify the SSO's listing, the Department of Revenue shall deny the request. If at a later date the contributor's recipient SSO becomes listed, it will be necessary for a new Form IT-QEE-TP1 to be filed by the contributor with the Department of Revenue.

(c) Form "IT-QEE-TP1" shall include the following information:

1. The name of the SSO listed on the Department of Education's website to which the contribution will be made. The SSO should be listed on the Department of Education's website before the Form "IT-QEE-TP1" is filed with the Department of Revenue.

2. The taxpayer identification number of the SSO to which the contribution will be made.

3. The name, address and taxpayer identification number of the contributor.

4. The type of taxpayer.

5. If the contributor is an individual, the filing status.

6. If the contributor is an individual filing a joint return, the name and identification number of the joint filer.

7. The intended contribution amount.

8. If the contributor is a corporation, 75% of the estimated income tax liability the corporation expects for the tax year, of the corporation, in which the contribution will be made.

9. Tax year end of the contributor.

10. Calendar year in which the contribution will be made.

11. Any other information the Commissioner of the Department of Revenue may require.

12. If the contributor is a Subchapter S corporation for Georgia purposes, or a partnership or a limited liability company treated as a partnership, such contributor must provide the information required by subparagraph (9)(c) of this regulation for each shareholder, partner, or member as well as the profit/loss percentage for each shareholder, partner, or member and the amount of the intended contribution allocated to each shareholder, partner, or member based on the profit/loss percentage.

13. Certification that all information contained on the Form "IT-QEE-TP1" is true to his/her best knowledge and belief and is submitted for the purpose of obtaining preapproval from the Commissioner.

(d) The qualified education expense credit shall be allowed on a first-come, first-served basis. The post mark date of the Form IT-QEE-TP1 shall be used to determine such first-come, first-served basis.

(e) The Department will notify each taxpayer of the tax credits preapproved and allocated to such taxpayer within thirty days from the date the Form IT-QEE-TP1 was received.

(f) On the day any Form IT-QEE-TP1 is received for a calendar year that causes the \$50 million calendar year limitation to be reached, then the remaining \$50 million calendar year limitation amount shall be allocated among the applicants who filed the Form IT-QEE-TP1 on such day on a pro rata basis based upon the amounts otherwise allowed by O.C.G.A. § 48-7-29.16.

(g) The contribution must be made by the taxpayer within thirty days of the date of the preapproval notice received from the Department and within the calendar year in which it was preapproved.

(h) In the event it is determined that the contributor has not met all the requirements of O.C.G.A. § 48-7-29.16, then the amount of the qualified education expense credit shall not be preapproved or the preapproved qualified education expense credit shall be retroactively denied. With respect to such denied credit, tax and interest shall be due if the qualified education expense credit has already been claimed.

(i) Once the \$50 million calendar year limitation is reached for a calendar year, taxpayers shall no longer be eligible for a credit pursuant to O.C.G.A. § 48-7-29.16, for such calendar year. If any Form IT-QEE-TP1 is received after the \$50 million calendar year limitation has been reached, then it shall be denied and not be reconsidered for preapproval at any later date.

(10) **Letter of Confirmation.** A copy of the preapproval notice shall be sent by the contributor to the SSO along with the contribution. Form IT-QEE-SSO1 shall be provided by the SSO to the taxpayer to confirm the contribution.

(11) **Claiming the Credit.** A taxpayer claiming the qualified education expense credit, unless indicated otherwise by the

Commissioner, must submit the Form IT-QEE-SSO1 and Form IT-QEE-TP2 with the taxpayer's Georgia tax return when the qualified education expense credit is claimed.

(12) **E-filing Attachment Requirements.** If a taxpayer claiming the credit electronically files their tax return, the Form IT-QEE-SSO1 shall be required to be attached to the return only if the Internal Revenue Service allows such attachments when the data is transmitted to the Department. In the event the taxpayer files an electronic return and such information is not attached because the Internal Revenue Service does not, at the time of such electronic filing, allow electronic attachments to the Georgia return, such information shall be maintained by the taxpayer and made available upon request by the Commissioner.

(13) **Carry Forward.** Any credit which is claimed but not used in a taxable year shall be allowed to be carried forward to apply to the taxpayer's succeeding five years' tax liability. However, any amount in excess of the credit amount limits in paragraphs (7) and (8) of this regulation shall not be eligible for carryover to the taxpayer's succeeding years' tax liability nor shall such excess amount be claimed by or reallocated to any other taxpayer.

(14) **Taxpayer Must Add Back Portion of Federal Deduction on State Return if Taxpayer Takes State Credit.** O.C.G.A. § 48-7-29.16(h)(1) provides that no qualified education expense credit shall be allowed under O.C.G.A. § 48-7-29.16, with respect to any amount deducted from taxable net income by the taxpayer as a charitable contribution to a bona fide charitable organization qualified under Section 501(c)(3) of the Internal Revenue Code. Accordingly, the taxpayer must add back to Georgia taxable income that part of any federal charitable contribution deduction taken on a federal return for which a

Georgia qualified education expense credit is allowed under O.C.G.A. § 48-7-29.16.

(15) **Pass-Through Entities.** In the event the qualified education expense credit is passed through to shareholders, partners, or members, such credits shall be available for use as a credit in the shareholders', partners', or members' tax year in which the tax year of such Subchapter S corporation, partnership, or limited liability company ends. For example: A partnership earns the qualified education expense credit for its tax year ending January 31, 2009. The qualified education expense credit is available for use by the individual partner beginning with the calendar 2009 tax year.

(16) **Scholarships.**

(a) For all scholarships including multi-year scholarships, the SSO shall deliver the scholarship check directly to the private school selected as a result of the private choice of the parent or guardian of the child to whom the scholarship was awarded. The parent or guardian of the student shall come to such private school and restrictively endorse the check to such private school for deposit into the account of such private school as is required by O.C.G.A. § 20-2A-5. Such private school shall not be allowed to endorse the check over to a different private school.

(b) In the event an SSO awards a multi-year scholarship, the SSO may disburse the entire scholarship at the time the scholarship is awarded.

(c) For all scholarships including multi-year scholarships, the private school shall separately account for each scholarship awarded. Additionally, the income earned on the portion of the scholarship which has not yet been applied to tuition shall be separately accounted for and shall be used to provide tuition for such

eligible student. The scholarship shall be applied to tuition on the same due dates as the general population of students of such school.

(d) Should such student cease attending such school before the end of the multi-year period, the school shall return to the SSO the portion of the scholarship that pertains to any school year that has not yet started and the income earned on such portion. If the cessation date occurs on or before the first tuition due date of the general population of students of such school, such amounts shall be returned within 30 days after the first tuition due date of the general population of students of such school. However, if such school transfers the funds to a new eligible student on or before the first tuition due date of the general population of students of such school, such amounts shall not be required to be returned. If the cessation date occurs after the first tuition due date of the general population of students of such school but before the start of the school year, such amounts shall be returned within 30 days of such cessation date. Upon receipt of such returned scholarship, such SSO shall allocate and obligate such money for scholarships or tuition grants as soon as practical as provided in Chapter 2A of Title 20 of the O.C.G.A. except that 100% of such returned money and 100% of any income earned on such returned money shall be allocated and obligated. Once a private school receives such returned money and such income earned on such returned money, 100% of such amounts received shall be used for an eligible student.

(17) Designation of Contributions. A contribution directly or indirectly designated for a particular individual, whether such individual is a dependent of the taxpayer or not, is considered made to the individual and not to the SSO and as such is not eligible for the qualified education expense credit. This is consistent with the federal treatment of charitable contributions.

(18) Effective Date. This rule is applicable to taxable years beginning on or after January 1, 2008.

Chapter 560-7-8

Returns and Collections

Authority: O.C.G.A. §§ 48-2-12 and 48-7-29.16.